

XAVIER BECERRA, SBN 118517
Attorney General of California
MARGARITA PADILLA, SBN 99966
Supervising Deputy Attorney General
JAMES POTTER, SBN 166992
Deputy Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-0815
Fax: (510) 622-2270
Margarita.Padilla@doj.ca.gov
James.Potter@doj.ca.gov

XAVIER BECERRA, SBN 118517
Attorney General of California
DANETTE VALDEZ, SBN 141780
ANNADEL ALMENDRAS, SBN
192064
Supervising Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3367
Fax: (415) 703-5480
Danette.Valdez@doj.ca.gov
Annadel.Almendras@doj.ca.gov

STEVEN H. FELDERSTEIN, SBN 059678
PAUL J. PASCUZZI, SBN 148810
FELDERSTEIN FITZGERALD
WILLOUGHBY & PASCUZZI LLP
400 Capitol Mall, Suite 1750
Sacramento, CA 95814
Telephone: (916) 329-7400
Fax: (916) 329-7435
sfelderstein@ffwplaw.com
ppascuzzi@ffwplaw.com

Attorneys for California Department of Toxic
Substances Control, et al.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Affects PG&E Corporation |
| <input type="checkbox"/> | Affects Pacific Gas and
Electric Company |
| <input checked="" type="checkbox"/> | Affects both Debtors |

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

Date: June 11, 2019
Time: 9:30 a.m.
Ctvm: 17
Judge: Dennis Montali

**LIMITED OBJECTION OF THE CALIFORNIA STATE AGENCIES TO MOTION OF
DEBTORS FOR ORDER (I) ESTABLISHING DEADLINE FOR FILING
PROOFS OF CLAIM, (II) ESTABLISHING THE FORM AND MANNER OF
NOTICE THEREOF, AND (III) APPROVING PROCEDURES FOR PROVIDING
NOTICE OF BAR DATE AND OTHER INFORMATION TO ALL CREDITORS
AND POTENTIAL CREDITORS [DOCKET NO. 1784]**

1 The California Department of Toxic Substances Control, California Department of Water
2 Resources acting by and through the California Energy Resources Scheduling Division and on
3 behalf of the State Water Project, State Water Resources Control Board, Regional Water Quality
4 Control Boards, State Energy Resources Conservation and Development Commission, California
5 Department of Forestry and Fire Protection (CAL FIRE), California Coastal Commission,
6 California Air Resources Board, Department of Parks and Recreation, San Francisco Bay
7 Conservation and Development Commission, Department of Housing and Community
8 Development, Central Valley Flood Protection Board, Department of Conservation including the
9 Division of Oil, Gas, and Geothermal Resources, State Coastal Conservancy and California
10 Department of Fish and Wildlife (collectively, the “California State Agencies”)¹ hereby file this
11 limited objection to the Motion of Debtors for an order (i) establishing deadline for filing proofs
12 of claim, (ii) establishing the form and manner of notice thereof, and (iii) approving procedures
13 for providing notice of bar date and other information to all creditors and potential creditors (the
14 “Motion”) [Docket No. 1784] based on the following:

15 1. The California State Agencies have met and conferred with the Debtors regarding
16 their issues with the Motion. As described below, subject to review and agreement on revised
17 language in the proposed order, the California State Agencies believe that most issues may be
18 resolved. The Debtors have circulated a revised proposed order, which the California State
19 Agencies are reviewing at this time. The unresolved issues include clarity regarding what is
20 considered a “claim” for which a proof of claim must be filed. The California State Agencies
21 believe other parties also have raised this issue and are discussing this issue with the Debtors. As
22 such, the California State Agencies reserve all rights to review any proposed revised language for
23 the proposed order on the Motion, to pursue its objection as described herein, and to join other
24 objections to the proposed order. Also, the California State Agencies requested the Debtors to

25
26 ¹ The following California State Agencies were added to the agencies filing this limited objection
27 after the filing of the Stipulation Between Debtors and California State Agencies Extending Time
28 to Respond to Bar Date: Department of Conservation, including the Division of Oil, Gas, and
Geothermal Resources, and the State Coastal Conservancy. Counsel for the California State
Agencies informed Debtors’ counsel that other state agencies may be joining this limited
objection.

1 include language reserving the right to challenge the Debtors' characterization of executory
2 contracts in their schedules, which language is still being discussed.

3 **Unresolved Issues**

4 2. The California State Agencies believe that the proposed order should be clear that
5 California residents, businesses, and governmental units, including but not limited to cities,
6 counties and state entities, do not need to file proofs of claim based on future fires for which the
7 Debtors may be liable. The proper test for whether a claim exists in the Ninth Circuit is the "fair
8 contemplation" test.² The Debtors' motion can be understood to suggest that given the
9 circumstances existing at this time regarding the state of the Debtors' transmission system and the
10 risk of wildfires in the utility Debtor's service area, it is within the fair contemplation of
11 residents, businesses, or governmental units that a fire would occur in the future which would
12 cause damage and/or trigger government response actions such that a claim for future damages
13 from a fire that has yet to occur is required to be filed against the Debtors in these bankruptcy
14 cases. Requiring residents, businesses or governmental units to file a claim in this hypothetical is
15 not a proper application of the fair contemplation test. If the Debtors disagree and intend to take
16 such a position, the Debtors' proposed notices are wholly insufficient to provide the notice that
17 would satisfy the requirement of due process for a claims bar date.

18 3. The California State Agencies are aware that the Sonoma Clean Power Authority
19 and others also have raised this issue and are in discussions with the Debtors. The California
20 State Agencies join in other objections on this issue. While hopeful that this issue can be
21 resolved, the California State Agencies reserve all rights to present this objection to the Court at
22 the hearing and/or review and approve language to be added to the proposed order.

23 4. The California State Agencies also have requested additional language in
24 paragraph 13 of the proposed Order addressing reservations of rights to challenge the designation
25 of matters as executory contracts in the Debtors' schedules. The California State Agencies do not

26 ² *SNTL Corp. v. Ctr. Ins. Co. (In re SNTL Corp.)*, 571 F.3d 826, 839 (9th Cir. 2009) (The Ninth
27 Circuit has adopted the "fair contemplation" test for determining when a claim accrues for the
28 purposes of section 502(b). Under that test, a claim arises when a claimant can fairly or
reasonably contemplate the claim's existence even if a cause of action has not yet accrued under
nonbankruptcy law).

1 necessarily agree with the Debtors' listing of certain matters in its schedules as "Executory
2 Contracts," and are concerned that this language could be used by the Debtors to bar future
3 injunctive relief as to such matters. The Debtors have agreed to revise the proposed order to
4 address this issue, but the exact revisions are still being discussed. The California State Agencies
5 request that the following underlined language be added to paragraph 13(c) of the proposed order:
6 "Nothing contained in this Order or in the Motion is intended to be or shall be construed as . . . (c)
7 an approval or assumption of any agreement, contract, program, policy, or lease under section
8 365 of the Bankruptcy Code, or a waiver of the right to object to any designation that a matter is
9 an executory contract".

10 **Potentially Resolved Issues, Subject to Review and Agreement on Revised Proposed Order**

11 5. The California State Agencies object to the language in the proposed order that
12 purports to bar, estop or enjoin claimants from asserting claims if they fail to comply with the
13 order. Paragraph 5(i) of the proposed order provides that all holders of claims "that fail to
14 comply with this Order by timely filing a Proof of Claim in the appropriate form shall (i) be
15 forever barred, estopped, and enjoined from asserting such claims against the Debtors, their
16 property, or their estates (or submitting a Proof of Claim with respect thereto) . . ."

17 6. Such a provision is not appropriate at this stage of the case since, *inter alia*, it
18 essentially provides the Debtors a discharge prior to confirmation of any chapter 11 plan. It
19 further appears to prohibit the possible allowance of late claims as timely in the event of
20 excusable neglect. Further, if the Debtors are solvent, then even late claims have to be paid in full
21 under the best interests of creditors test in 11 U.S.C. § 1129(a)(7) in the absence of consent.³ The
22 California State Agencies are informed and believe that others have raised this issue with the
23 Debtors and that the Debtors have agreed to delete the offending language in a revised proposed
24 order. Subject to review and approval of the revised proposed order, this issue appears to be
25 resolved.

26 ³ See e.g., *In re Sheehan Mem'l Hosp.*, 507 B.R. 802 (Bankr. W.D.N.Y. 2014); *In re Wash. Mut.*,
27 *Inc.*, 442 B.R. 314, 357 (Bankr. D. Del. 2011); *In re Best Payphone, Inc.*, 523 B.R. 54, 75 (Bankr.
28 S.D.N.Y. 2015) (the best interests test would "require the solvent chapter 11 plan proponent to
satisfy late claims, as the trustee would have to do in a chapter 7 case, before equity can receive
or retain property").

1 7. The California State Agencies also note that the definition of a “Wildfire Claim” in
2 the Motion is extremely broad and appears to include claims from wildfires that are not tort
3 claims. The California State Agencies note that not all claims that arise from a wildfire are tort
4 claims. For example, CAL FIRE has statutory claims for cost recovery that would fit within the
5 definition of a Wildfire Claim in the Motion, but such claims are not tort claims. See Health &
6 Safety Code §§ 13009 and 13009.1. The California State Agencies believe that statutory and
7 non-tort claims against the utility Debtor, which stem from responding to numerous wildfires—
8 including past wildfires not specifically named on the Debtors’ proposed Wildfire Claim form—
9 should not be required to be filed on the same forms and provided the same treatment as tort
10 claims stemming from wildfires. While this Motion might not be determinative of treatment
11 under a future chapter 11 plan, the California State Agencies are concerned that the Debtors’
12 broadly defined “Wildfire Claim” may snowball into attempting to treat non-tort, statutory based
13 claims in the same manner as tort-based wildfire claims. As such, the California State Agencies
14 note their objection for the record and reserve all rights as to treatment of non-tort, statutory based
15 wildfire claims in a future chapter 11 plan.

16 8. The Debtors have informed the California State Agencies that they will add
17 language to the proposed order that addresses this issue. Because of the unduly onerous
18 requirements of the Debtors’ proposed Wildfire Claims form and confusion that is likely to arise
19 as to which claim form to use, the California State Agencies submit that governmental units of the
20 State of California be excluded from being required to use the Wildfire Claim forms entirely.
21 However, at a minimum the California State Agencies request language clarifying that, for
22 purposes of the Bar Date Order, statutory and non-tort wildfire-related claims of any
23 governmental unit of the State of California shall be excluded from the definitions of “Wildfire
24 Claim” and “Wildfire Claimant” and such governmental units shall not be required to submit such
25 claims using the Wildfire Claimant Proof of Claim Forms but rather such parties may use the
26 Standard Proof of Claim Form, or a proof of claim that conforms substantially to the Official
27 Form (410B), to file statutory and non-tort wildfire-related claims. Further, the California State
28 Agencies are aware that the Official Committee of Tort Claimants (“TCC”) has proposed a

1 different Wildfire Claim form and understand that the Debtors are having discussions with the
2 TCC and others regarding the different forms. The California State Agencies reserve their rights
3 regarding the forms and procedures for Wildfire Claims.

4 9. The Debtors' proposed order requires claimants to file the different types of claims
5 in "substantially" the form specified and imposes drastic consequences if the appropriate form is
6 not used. See Order ¶¶ 3(c-e) and 5(ii). Paragraph 5 of the proposed order purports to
7 disenfranchise creditors for purposes of voting and distribution if the claim is not filed on the
8 "appropriate form." Order ¶ 5(ii). The requirement to use those forms in this case should be no
9 more strictly enforced than is the requirement in other bankruptcy cases to use the standard form.
10 See e.g., Fed. Rule. Bankr. Proc. 3001(a). So long as the nature, validity and basis of the claim
11 can be determined, the claim should obtain the "deemed allowed" status provided under section
12 502(a) regardless of which form the creditor uses.

13 10. The California State Agencies and other creditors should not be prejudiced for not
14 using a form that "substantially" conforms to the Debtors' proposed forms or the "appropriate
15 form" among the choices for the particular claim. This is particularly true given that the Debtors
16 have broadly defined "Wildfire Claim" when there are non-tort or statutory claims that relate to
17 wildfires.

18 11. On this point, the California State Agencies agree with the language proposed by
19 the Ad Hoc Committee of Subrogation claimants (Docket No. 2043, page 5, lines 20-23):
20 "Notwithstanding anything to the contrary herein, claimants that make a good faith effort to assert
21 a claim in the appropriate form shall be permitted to revise, amend and/or supplement their proof
22 of claim until such claim is allowed or disallowed by Court order." The Debtors have circulated a
23 revised proposed order containing similar language, which the California State Agencies are
24 reviewing at this time.

25 12. The California State Agencies have requested that the Debtors make clear in the
26 proposed order that the word claim refers to "claim" as defined in 11 U.S.C. §101(5), which the
27 California State Agencies are informed and believe the Debtors have agreed to do. Subject to
28 review and approval of the revised proposed order, this issue appears to be resolved.

1 13. The Motion seeks to set a deadline to file a claim if the schedules are amended,
2 which typically would be proper. However, the California State Agencies submit that the
3 description of the claims in the Debtors' schedules is often vague and ambiguous with respect to
4 agencies of the State of California, with many such entries merely referencing the "State of
5 California." The California State Agencies request that paragraph 3(l) of the order indicate that
6 any notice of an amendment to the schedules provide sufficient information for the claimant to be
7 able to determine the identity of the claimant and the nature of the amendment or supplement,
8 which the Debtors appear to have agreed to do. The Debtors have circulated a revised proposed
9 order containing similar language, which the California State Agencies are reviewing at this time.

10 14. The Department of Water Resources, acting by and through the California Energy
11 Resources Scheduling Division (CERS), requested that the Debtors add language to the proposed
12 order clarifying that claims against Debtor, Pacific Gas & Electric Company, arising out of the
13 2000-2001 energy crisis refund proceedings before FERC are not required to file a Proof of Claim
14 on or before the Bar Date. The Debtors have circulated a revised proposed order containing
15 acceptable language on this issue. Subject to review and approval of the final version of the
16 revised proposed order, this issue appears to be resolved.

17 15. Finally, the Debtors request that proofs of claim using the Debtors' proposed
18 Wildfire Claim form be kept confidential. See Order ¶ 4. The California State Agencies do not
19 believe these claims should be confidential, unless otherwise requested by the wildfire claimants
20 or the Official Committee of Tort Claimants. The California State Agencies do not want their
21 wildfire-related proofs of claim to be treated as confidential. While there may be information in
22 the California State Agencies' and other governmental units of the State of California respective
23 supporting documentation which will be redacted to protect state employees' privacy rights (e.g.,
24 employee social security numbers), the proofs of claim should not be confidential and limited to
25 review by only the select group mentioned in the proposed order. The Debtors have agreed to
26 carve out the California State Agencies from the language requiring that information submitted in
27 connection with Wildfire Claims remain confidential; however, the California State Agencies
28 believe this revision should apply to all governmental units of the State of California. Subject to

1 review and approval of the revised proposed order, this issue may be resolved.

2 16. Neither this limited objection nor any subsequent appearance, pleading, proof of
3 claim, claim or suit is intended or shall be deemed or construed as:

4 a. a consent by the California State Agencies to the jurisdiction of this Court
5 or any other court with respect to proceedings, if any, commenced in any case against or
6 otherwise involving the California State Agencies;

7 b. a waiver of any right of the California State Agencies to (i) have an Article
8 III judge adjudicate in the first instance any case, proceeding, matter or controversy as to which a
9 Bankruptcy Judge may not enter a final order or judgement consistent with Article III of the
10 United States Constitution, (ii) have final orders in non-core matters entered only after de novo
11 review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the Chapter 11
12 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases, (iv) have the
13 United States District Court withdraw the reference in any matter subject to mandatory or
14 discretionary withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs, recoupments
15 or remedies to which the California State Agencies are or may be entitled under agreements, in
16 law or in equity, all of which rights, claims, actions, defenses, setoffs and recoupments are
17 expressly reserved hereby; or

18 c. a waiver of any objections or defenses that the State of California, the
19 California State Agencies or any other agency, unit or entity of the State of California may have
20 to this Court's jurisdiction over the State of California, the California State Agencies or such

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 other agency, unit or entity based upon the Eleventh Amendment to the United States
2 Constitution or related principles of sovereign immunity or otherwise, all of which objections and
3 defenses are hereby reserved.

4 Dated: May 31, 2019

Respectfully submitted,

5 XAVIER BECERRA
6 Attorney General of California
7 MARGARITA PADILLA
Supervising Deputy Attorney General

By: /s/ Paul J. Pascuzzi

8 STEVEN H. FELDERSTEIN
9 PAUL J. PASCUZZI
10 FELDERSTEIN FITZGERALD
11 WILLOUGHBY & PASCUZZI LLP
12 Attorneys for California Department of Toxic
13 Substances Control, California Department of Water
14 Resources acting by and through the California Energy
15 Resources Scheduling Division and on behalf of the
16 State Water Project, State Water Resources Control
17 Board, Regional Water Quality Control Boards, and
18 State Energy Resources Conservation and Development
19 Commission, California Department of Forestry and
20 Fire Protection (CAL FIRE), California Coastal
21 Commission, California Air Resources Board,
22 Department of Parks and Recreation, San Francisco Bay
23 Conservation and Development Commission,
24 Department of Housing and Community Development,
25 Central Valley Flood Protection Board, Department of
26 Conservation including the Division of Oil, Gas, and
27 Geothermal Resources, State Coastal Conservancy, and
28 California Department of Fish and Wildlife

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, Suite 1750, Sacramento, CA 95814. On May 31, 2019, I served the within documents:

By Electronic Service only via CM/ECF.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28